



Case Western Reserve Law Review

Volume 14 | Issue 3

1963

Conflict of Laws

Fletcher R. Andrews

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Fletcher R. Andrews, *Conflict of Laws*, 14 W. Res. L. Rev. 403 (1963)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol14/iss3/7>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Since only one cause of action is created where personal injuries and property damage result from the same wrongful act,⁵⁴ application of general res judicata principles precludes the plaintiff from prosecuting the initial suit.

A valid and final judgment rendered in one action is conclusive in another action between the parties although the other action was commenced before the rendition of the judgment or before the commencement of the action in which the judgment was rendered.⁵⁵

OVID C. LEWIS

CONFLICT OF LAWS

DOMICILE

*Riss & Co. v. Bowers*¹ applies to motor vehicle registration laws the well-known principle that the domicile of a corporation is the state of its incorporation.²

CUSTODY

Another example of the intolerable battle between divorced or separated parents for the custody of their children is found in the case of *Ex parte Elliott*.³ Although, strictly speaking, the court successfully and justifiably side-steps the full faith and credit issue and determines the matter on the basis of the child's welfare, the opinion does contain valuable material about jurisdiction in and recognition of custody proceedings. For instance, the court pointed out that where the mother and children were living in Kentucky pursuant to a separation agreement, an Ohio court has no jurisdiction to cancel the separation agreement and award custody to the father, domiciled in Ohio, in the absence of jurisdiction in personam over the mother. This is so despite the fact that the father has brought the children back to Ohio.

Subsequently, the mother moved to Maryland, and, with the father's consent, took the children there for a visit. She did not bring them back. The father went to Maryland, and the mother commenced an action in Maryland for custody of the children, getting personal service on the father. A few days later, the children were released temporarily to the father under bond, and he returned to Ohio with them. The Maryland court gave custody of the children to the mother. The Ohio court in the case under review held that under the circumstances, the Maryland court had jurisdiction to decree custody. But the Ohio court said that the effect

54. *Rush v. Maple Heights*, 167 Ohio St. 221, 147 N.E.2d 599 (1958).

55. RESTATEMENT, JUDGMENTS § 43 (1942).

of the full faith and credit clause on such a decree has not been clearly defined, although the probable rule is that such a judgment must be recognized in another state in the absence of changed circumstances. In view of the uncertainty of the law, and in order to promote the welfare of the children, the court decided the case on the merits.

CONDITIONAL SALES OF AUTOMOBILES

*Atlantic Finance Co. v. Fisher*⁴ is an important case interpreting the Ohio law concerning automobile certificates of title.⁵ Technically, the case involves merely the interpretation of an Ohio statute, and is not really a conflict of laws case, but it is so closely related that it should be mentioned.

An Illinois certificate of title showed title in S and a first lien in plaintiff, a finance company. A thief stole the car in Illinois, brought it to Ohio, and obtained an Ohio certificate of title which showed no liens. The car was sold to innocent purchasers for value in Ohio, who financed their purchase through defendant. Despite the fact that the Ohio certificate of title was "clean," the court ruled in favor of plaintiff in a replevin action. The court held that the Illinois certificate of title was entitled to full faith and credit; that it must be recognized to the same extent that an Ohio certificate would be recognized; and that under the Ohio Certificate of Motor Vehicle Title Law⁶ a thief cannot convey valid title to a stolen motor vehicle to a bona fide purchaser although the certificate of title used appears valid on its face. The court distinguished *Kelley Kar Co. v. Finkler*,⁷ a distinction not adhered to by a minority of the court.

CONTRACTS

Another case on the fringe so far as conflict of laws is concerned is *Kemp v. Darke County Farm Bureau*.⁸ Defendant, an Ohio corporation, entered into a contract with plaintiff. The contract was made and to be performed in Indiana. Defendant was not qualified to do business in Indiana. However, the Indiana law did not make the contract void, but merely prohibited such a corporation from maintaining an action in Indiana. Inasmuch as the contract was valid by Indiana law, the court held that the action could be maintained.

1. 114 Ohio App. 429, 182 N.E.2d 862 (1961).

2. RESTATEMENT, CONFLICT OF LAWS § 41 (1934).

3. 114 Ohio App. 533, 183 N.E.2d 804 (1961).

4. 173 Ohio St. 387, 183 N.E.2d 135 (1962).

5. OHIO REV. CODE §§ 4505.01-.19.

6. *Ibid.*

7. 155 Ohio St. 541, 99 N.E.2d 665 (1951).

8. 115 Ohio App. 1, 184 N.E.2d 103 (1961).

PLACE OF TORT

"The law of the place (the territorial area) in which an act occurs has traditionally been said to determine whether the act is tortious."⁹ In *Conway v. Ogier*¹⁰ the court applied the rule to a malpractice action. An Ohio woman was operated on in New York, and the court held that the place of injury for the malpractice action was New York. In the same case the court had the more difficult problem of deciding the situs of a cause of action for loss of consortium, brought by the husband, who had remained in Ohio at all times. After observing that no case in point had been found, the court held that New York was the situs of the tort, since New York's interest in negligent conduct occurring there is a stronger claim than Ohio's interest, which rests only on the domicile of the couple.

STATUTE OF LIMITATIONS

*Conway v. Ogier*¹¹ also contains an unusual statute of limitations problem. It will be recalled that the case involved alleged malpractice committed in New York. When the doctor sued in Ohio for the value of his services, the defendant counterclaimed for malpractice. The counterclaim was brought after the expiration of both the Ohio and the New York statutes, the Ohio being one year and the New York two years. However, by Ohio law the statute of limitations does not bar cross-demands or recoupment without affirmative relief, whereas by New York law it does. The court held that the law of Ohio governs. Limitations are procedural and controlled by the law of the forum. The right to use a claim as a cross-demand or recoupment is the same in its nature as the right to obtain affirmative relief. Hence, such a right should also be classified as procedural. The Ohio Borrowing Statute¹² applies the foreign statute only when the limitation is to a lesser period than Ohio's. Here the New York limitation is longer. As a result, cross-demands and recoupment are not barred.

FLETCHER R. ANDREWS

9. LEFLAR, CONFLICT OF LAWS § 110 (1959).

10. 115 Ohio App. 251, 184 N.E.2d 681 (1961).

11. *Supra* note 10.

12. OHIO REV. CODE § 2305.20.